

REMARKS

This is in response to the Office Action mailed May 21, 2004. In the Office Action, claims 15-19 were rejected. With this amendment, claims 15-19 are amended and presented for reconsideration and allowance.

Section Eight of the Office Action indicated that the current status of all non-provisional parent applications should be included. Applicants have amended the specification to indicate that U.S. Patent Application Number 09/092,389 (the parent) has now become U.S. Patent Number 6,349,331.

Sections Nine through Nineteen recited a number of issues regarding the claims with respect to 35 U.S.C. § 112. Applicants have endeavored to address each and every objection with an appropriate amendment and respectfully believe that all claims are now in proper form for allowance.

Section Eighteen of the Office Action indicated that dependent claim 17 uses a term "approximately" to describe bounds of an interval, which allegedly is inherently indefinite. Applicants have amended dependent claim 17 to recite "about" in place of "approximately." Applicants respectfully note that the use of "about" is in accordance with Section 2173.05(b) of The Manual of Patent Examining Procedure, 8th Edition, as revised May 2004.

Section Twenty of the Office Action raised a couple of points with respect to claim 18. With respect to this claim, the Office Action asserted that, "The claim in the current form fails to include necessary recitations/steps which are required for minimal operation of the invention." Applicants respectfully submit that independent method claim 18 and its recitation in step-plus-function format properly invokes construction under 35 U.S.C. § 112, paragraph six. Section 2181 of The Manual of Patent Examining Procedure specifically requires that the step must not be modified by structure, material or acts for achieving the specified function

in order to properly invoke 35 U.S.C. § 112, paragraph six. That Section also provides that, "[i]f a claim limitation invokes 35 U.S.C. § 112, sixth paragraph, it must be interpreted to cover the corresponding structure, materials, or acts in the specification and 'equivalents thereof.'" Accordingly, Applicants respectfully submit that the reliance of the Office Action upon In re Van Geuns, 988 F. 2d 1181, (Fed. Cir. 1993) is misplaced since that case did not deal with construction of a claim under 35 U.S.C. § 112, paragraph six. Applicants respectfully submit that independent claim 18, when properly construed using the corresponding structure, materials or acts in the specification and "equivalents thereof," is in fact allowable over the art of record.

Sections Twenty-One and Twenty-Two indicated that claims 15-19 were rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over, *inter alia*, claim 1 of U.S. Patent 6,349,331. In response, Applicants provide herewith, under separate paper, a terminal disclaimer to obviate obviousness-type double patenting. Applicants respectfully submit that the terminal disclaimer properly overcomes the rejection of claims 15-19 under the judicially-created doctrine of obviousness-type double patenting.

Section Twenty-Six of the Office Action indicated that claim 18 was rejected under 35 U.S.C. § 102(e) as being anticipated by Patel (U.S. Patent 6,148,002). In Section Twenty-Eight, the Office Action asserts that the invention, "as broadly claimed, as interpreted by the Examiner, was disclosed by Patel." Respectfully, as described above, since independent claim 18 properly invokes construction under 35 U.S.C. § 112, sixth paragraph, Applicants respectfully believe that the proper construction of that claim is, in fact, allowable over the teachings of Patel since the embodiments of Applicant's invention described in the specification with respect to the manner in which the `break_link_timer` is initiated a number of iterations less than the number of ports.

In conclusion, Applicants respectfully submit that the entire application is now in condition for allowance. Reconsideration and favorable action are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to deposit account No. 23-1123.

Respectfully submitted,

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